



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 15, 1991

Mr. Jeff Hankins
Program Division, Legal Services 110-1C
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR91-496

Dear Mr. Hankins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13572.

The Texas Department of Insurance (the department) has received a request for the following information:

1. All documents obtained by the Texas Board of Insurance in connection with its investigation of Western States Indemnity, Ltd.
2. Any and all notes taken by any employee or agent of the Texas Department of Insurance of any telephone conversations relating to the Texas Department of Insurance's investigation into Western States Indemnity, Ltd.
3. Any and all correspondence authored by the Texas Department of Insurance in connection with its investigation of Western States Indemnity, Ltd.

You claim that the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(3), 3(a)(7), and 3(a)(11) of the Open Records Act.

Open Records Decision No. 551 (1990) held that section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to the pending litigation. Moreover, section 3(a)(3) applies only where the litigation involves or is expected to involve the governmental body which is claiming the litigation. Open Records Decision No. 392 (1983) at 3. You have not indicated that the department is currently involved in or may reasonably anticipate being party to the litigation. Indeed, you advise us that the department has referred the investigation to the district attorneys of Travis and Dallas Counties, who have not indicated whether they intend to prosecute. Accordingly, we have no basis for concluding that litigation may be reasonably anticipated. However, if, within 14 days of the date of this letter, you can demonstrate that the requested information relates to pending or reasonably anticipated litigation, we will reconsider your section 3(a)(3) claim. Otherwise, you may not properly invoke a section 3(a)(3) exception.

You claim that some of the requested information is excepted from required public disclosure by the attorney-client privilege aspect of section 3(a)(1) and by section 3(a)(7). Although this office has frequently cited section 3(a)(1) to except from disclosure information within the attorney-client privilege, the privilege is more specifically covered under section 3(a)(7). Open Records Decision No. 574 (1990). Section 3(a)(7) excepts

matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rule and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure.

(Footnote Omitted.) Information which does not contain legal advice or opinion or reveal client confidences is not protected by section 3(a)(7). *Id.* Some of the information submitted to us for review contains legal advice or opinion. This information has been marked and may be withheld under section 3(a)(7). The remainder of the information for which you claim section 3(a)(7) is factual and must be released.

You claim some of the requested information is excepted from disclosure by section 3(a)(11) which excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." Section 3(a)(11) excepts memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policy-making or deliberative process. Open Records Decision No. 462 (1987) at 14. However, facts and written observations of

fact which are severable from material excepted under section 3(a)(11) must be disclosed. Open Records Decision No. 582 (1990). The documents you submitted to us contain advice, opinion, or recommendation, some of which is severable from information not excepted under section 3(a)(11). For your convenience, we have marked the information which may be withheld under section 3(a)(11). The remainder of the information must be disclosed.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-496.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/GK/lcd

Enclosures: Open Records Decision No. 392

Ref.: ID#s 13572, 13721

cc: Mr. C. John Scheef, III
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